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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/296,582	04/23/1999	JOHN R. PEERY	000952066	8609

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EXAMINER

MAYNARD, JENNIFER J

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 11/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/296,582

Applicant(s)

PEERY, JOHN R.

Examiner

Jennifer J Maynard

Art Unit

3763

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 October 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 3-7 and 21-27.

Claim(s) objected to: _____

Claim(s) rejected: 1,2,7 and 8.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☒ Other: See Continuation Sheet

Continuation of 5. does NOT place the application in condition for allowance because: In response to Applicant's assertion that the leaf spring (55) of Kercso (US 4,105,030) is not entirely within the cannula, the Examiner refers Applicant to Figure 4E, wherein the leaf spring does not extend beyond or bisect the plane created by the cannula's sloped distal tip, therefore contrary to Applicant's assertion, it is clear that Kercso's leaf spring is indeed received entirely within the cannula. With respect to Claim 7, the Examiner refers Applicant to US Patent No. 5,876,384 A, Figure 2, taper (S) inserted into tube (11) and claim language, lines 25-31(Claim 1), US Patent No. 3,667, 465 A, Figure 3, tapered end (no reference numeral) adjacent flat end (42) inserted into tube (12) and Column 4, lines 10-11, US Patent No. 4,919, 322 A, Figure 3, taper adjacent groove (56) inserted into bore (32) of tube (26) and Column 4, lines 64-68, US Patent No. 4,155,125 A, Figure 2, taper (20) inserted through tube (10) and Column 3, lines 63-66, US Patent No. 4,919,678 A, Figure 1, taper (26) inserted into tube (3) and Column 2, lines 19-21, US Patent No. 4,329, 985 A, Figure 1, tapered outlet (34) inserted into tube (44) and Column 4, lines 21-23, and US Patent No. 6,070,501 A, Figure 1, taper (76) inserted into bore (81) of tube (80) and Column 5, lines 20-22. Additionally, the Examiner would like Applicant to refer to the following US Patent Nos. 4,060,083 A, 2,751,907 A and 5,273,532 A, which disclose tapered obturators/plungers for no explicit purpose, but set forth a precedence of obvious design choice .

Continuation of 10. Other: In response to Applicant's assertion that the finality of the outstanding office action is improper because the response dated June 17, 2002 did not necessitate the new grounds of rejection, upon review of the office action mailed 02 August 2002 the Examiner notes that no such statement was made. The Examiner did not rely on such reasoning (i.e. necessitated by Applicant's amendment) to make the office action final, but rather the Examiner has made the office action final based on the MPEP 706.07 which states that upon second or any other subsequent examination or consideration by the examiner the rejection or other action may be made final. The office mailed a first action on the merits on 06 April 2001, to which Applicant filed Amendment A on 11 October 2001, the office then mailed a second action non-final on the merits on 11 October 2001, to which Applicant filed Amendment B on 13 December 2001 which amended Independent Claim 1 and added new Claims 21-27 which necessitated a new grounds of rejection and thus resulted in the proper finality of the office action mailed 07 March 2002, to which Applicant filed a Declaration swearing behind the art relied upon. Thus the Examiner has made the outstanding office action final as Applicant has received a first consideration on the claims as originally filed, and a second consideration on amended and newly added claims (i.e. Amendment B), thus any subsequent action can be properly made final.

J. Magrad
14 November 2002

Brian L. Casler
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